

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 18, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2011AP2823-CR**

**Cir. Ct. No. 2010CF4588**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL LYLE GIRARD,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Michael Lyle Girard appeals a judgment convicting him of operating a vehicle with a prohibited alcohol concentration, as a fourth offense within five years. The dispositive issue is whether the police had a reasonable suspicion to conduct a *Terry* stop. See *Terry v. Ohio*, 392 U.S. 1 (1968). We affirm.

¶2 According to Milwaukee Police Lieutenant Chad Milow’s testimony at the suppression hearing, Milow received word from his department late in the evening that a caller reported a blue van driving “all over the road” heading southbound on North Chicago Avenue. Milow intercepted a van matching the description and began to follow it in his unmarked police car. The van was traveling at the twenty-five miles-per-hour speed limit, and keeping one-and-a-half to two car lengths between it and the car in front of it. As he followed, the van suddenly turned left without signaling. The van went several more blocks, made a U-turn at an intersection, pulled over, and parked. Milow then turned on his emergency lights and informed dispatch that he was stopping the vehicle. Police Officer Craig Perkowski asked Girard to get out of the van and noticed that Girard’s eyes appeared glassy and bloodshot, and that his pupils were constricted.<sup>1</sup> Girard admitted to Perkowski that he had drunk four beers. Perkowski gave Girard a preliminary breath test, which showed his blood alcohol level to be .069. Milow then arrested Girard, who later admitted that he had also been taking oxycodone and smoking marijuana.

¶3 “The Fourth Amendment to the United State Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.” *State v. Artic*, 2010 WI 83, ¶28, 327 Wis. 2d 392, 786 N.W.2d 430. Consistent with the Fourth Amendment, a police officer may “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot.’” *State v.*

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<sup>1</sup> Police Officer Perkowski did not testify at the suppression hearing. The information about Perkowski’s role comes from the criminal complaint. Girard agreed at the plea hearing that the criminal complaint provided a factual basis for his guilty plea to the charge.

*Vorburger*, 2002 WI 105, ¶74, 255 Wis. 2d 537, 648 N.W.2d 829 (citing *Terry*, 392 U.S. at 30). A reasonable suspicion exists if the facts and circumstances ““would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.”” *State v. Anagnos*, 2012 WI 64, ¶48, 341 Wis. 2d 576, 815 N.W.2d 675 (quoted source omitted). Even when a police officer does not observe a driver violate any law, an investigative traffic stop may be supported by reasonable suspicion; otherwise, investigatory stops would only be allowed when there was already probable cause to make an arrest. *Id.* The paramount inquiry is whether the police action was reasonable. *Vorburger*, 255 Wis. 2d 537, ¶38.

¶4 Girard argues that Milow did not have a reasonable suspicion for a *Terry* stop because Girard was not required to use his left turn signal. *See* WIS. STAT. § 346.34(1)(b) (2011-12).<sup>2</sup> That statute provides: “**Turning movements and required signals on turning and stopping.** ... In the event any other traffic *may be affected* by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35.” *Id.* (Emphasis added.) Girard’s focus is too narrow. The issue is not simply whether Girard violated § 346.34(1)(b) when he failed to use his left turn signal. The issue is whether Milow had a reasonable suspicion that Girard may be committing a traffic infraction or violating a criminal law such that Milow could legally detain him pursuant to *Terry* to conduct further investigation. As previously explained, a reasonable suspicion of criminal activity may exist even where a police officer does not observe a driver violate the law. *See Anagnos*, 341 Wis. 2d 576, ¶47.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 Looking at all of the circumstances in light of Milow’s experience and training, Milow had a reasonable suspicion to stop Girard to investigate why he was driving erratically. Milow had been informed that a blue van was driving “all over the road” headed southbound on North Chicago Avenue late in the evening, a time when more impaired drivers would likely be found on the road. Milow came upon a blue van moments later headed southbound on North Chicago Avenue, in accord with the tip the police received, corroborating at least part of the information reported to the police. Milow followed the van and noticed that it was driving too close to the car in front of it.<sup>3</sup>

¶6 Milow then saw the van make a sudden left turn without using its turn signal in violation of WIS. STAT. § 346.34(1)(b). Although Girard contends he was not required to use a turn signal because no other vehicles were “affected by” his left turn, pointing to Milow’s testimony at the suppression hearing that Milow did not have to apply his brakes, whether Milow was, in fact, required to brake is beside the point. Girard acted in violation of the statute because he should have alerted any vehicle that might be affected by his action—in this case, Milow’s car, which was behind him—in order to give that car an opportunity to brake or take other action if necessary. Moreover, Milow was, in fact, affected by Girard’s action; Milow testified that he moved his foot from the gas pedal, preparing to defensively brake, but that it was not necessary. Under all of these circumstances, Milow had a reasonable suspicion to stop and detain Girard to further investigate whether Girard was engaged in illegal activity.

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<sup>3</sup> Milow estimated that Girard was driving fifteen to twenty feet behind the car in front of him. Milow testified that a safe stopping distance is ten feet for every ten miles per hour at slower speeds. Therefore, when a car is travelling twenty-five miles per hour, as Girard’s car was, it should maintain a twenty-five foot distance from the car in front of it.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5.

